

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                                 |   |              |
|---------------------------------|---|--------------|
| JOHANNA DORAN                   | : | CIVIL ACTION |
|                                 | : |              |
| v.                              | : |              |
|                                 | : |              |
| CREDIT BUREAU ASSOCIATES,       | : |              |
| EXPERIEN INFORMATION SOLUTIONS, | : |              |
| INC. and UNITED STUDENT AID     | : | NO. 99-2470  |
| FUNDS, INC.                     | : |              |

MEMORANDUM ORDER

Plaintiff has asserted claims against Credit Bureau Information Services ("CBIS"), (incorrectly sued as Credit Bureau Associates), Experien Information Solutions, Inc. ("Experien") and United Student Aid Funds, Inc. ("USA Funds") for violations of the Fair Credit Reporting Act. Defendant CBIS filed a motion to dismiss for improper venue and an alternative motion to transfer to the District of New Jersey pursuant to 28 U.S.C. § 1406(a).

Plaintiff, who is now a Pennsylvania citizen, was a New Jersey citizen at the time of the events giving rise to this action. Defendant CBIS is a New Jersey partnership and maintains its office in Cherry Hill, New Jersey. CBIS asserted improper venue as an affirmative defense in its answer, as well as the instant motions. Defendant Experien is an Ohio corporation with its principal place of business in California. Experien has not challenged venue by motion and has not asserted improper venue as an affirmative defense in its answer. Defendant USA Funds is an

Indiana corporation with its principal place of business in that state. USA Funds has not challenged venue by motion or in its answer.

Venue must be proper for each defendant. See Kunkler v. Palko Management Corp., 992 F. Supp. 780, 781 (E.D. Pa. 1998). A plaintiff, however, is not required to include in her complaint allegations showing that venue is proper in the district in which the suit has been brought. See Fed. R. Civ. P., Adv. Comm. Notes to Form 2, at P 3 ("Since improper venue is a matter of defense, it is not necessary for plaintiff to include allegations showing the venue to be proper"); 15 Charles Alan Wright et al., Federal Practice and Procedure §3826 (2d ed. 1986).

Experien and USA Funds have waived any lack of venue by failing to assert it in a Rule 12(b)(3) motion or other initial responsive pleading. See Fed. R. Civ. P. 12(h)(1); Stjernholm v. Peterson, 83 F.3d 347, 349 (10th Cir.), cert. denied, 519 U.S. 930 (1996); Phillips v. Rubin, 76 F. Supp.2d 1079, 1082 (D. Nev. 1999); AlliedSignal Inc. v. Blue Cross of California, 924 F. Supp. 34, 37 (D.N.J. 1996). The court thus address only whether venue is proper as to CBIS.

Contrary to defendant's assertion, the movant bears the burden of proving that venue is improper. See Myers v. American Dental Ass'n, 695 F.2d 716, 724 (3d Cir. 1982), cert. denied, 462 U.S. 1106 (1983); Simon v. Ward, 80 F. Supp.2d 464, 468 (E.D. Pa.

2000); Superior Precast, Inc. v. Safeco Ins. Co. of America, 71 F. Supp. 2d 438, 442 (E.D. Pa. 1999).

The court has federal question jurisdiction. Venue is thus governed by 28 U.S.C. §1391(b). Under §1391(b), venue is proper in a district where any defendant resides if all defendants reside in the same state, a district in which a substantial part of the events or omissions giving rise to the claim occurred or a district in which any defendant may be found if there is no district in which the action may otherwise be brought.

A corporation resides in any district in which it would be subject to personal jurisdiction when suit is commenced if the district were a state. See 28 U.S.C. §1391(c); Di Mark Mkt., Inc. v. Health Serv & Indem. Co., 913 F. Supp. 402, 408 (E.D. Pa. 1996). It is uncontroverted that Experien and USA Funds are subject to personal jurisdiction in this district and thus are deemed to reside here. If CBIS is subject to personal jurisdiction here, then all defendants "reside" here and venue in this district is proper.

In determining residence for purposes of § 1391(c), partnerships are treated as corporations. See Graf v. Tastemaker, 907 F. Supp. 1473, 1474 (D. Colo. 1995)(partnership defendant assessed under corporate venue standards); Garner v. Sawgrass Mills Ltd. Partnership, 35 U.S.P.Q.2d. 1396, 1401, 1994

WL 829978 (D. Minn. 1994) (partnerships treated as corporations for purposes of §1391(c)); Harley-Davidson, Inc. v. Columbia Tristar Home Video, Inc., 851 F. Supp. 1265, 1269 n.8 (E.D. Wisc. 1994)(§1391(c) standard applies to partnership); Injection Research Specialists v. Polaris Indus., L.P., 759 F. Supp. 1511 (D. Colo. 1991)(venue in suit involving defendant partnerships assessed under corporate venue standards); Kingsepp v. Wesleyan University, 763 F. Supp. 22, 28 (S.D.N.Y. 1991)(§1391(c) applied to partnerships). CBIS is thus deemed to reside in any judicial district in which the partnership is subject to personal jurisdiction.

Consistent with due process, a federal district court may exercise personal jurisdiction over a nonresident of the forum state to the extent authorized by the law of that state. Provident Nat'l Bank v. California Federal Savings Ass'n, 819 F.2d 434, 436 (3d Cir. 1987). Pennsylvania provides that a court may exercise personal jurisdiction to the full extent permitted by the Constitution. Van Buskirk v. Carey Canadian Mines, Ltd., 760 F.2d 481, 490 (3d Cir. 1985). There are two bases on which a court may exercise personal jurisdiction-- general jurisdiction or specific jurisdiction. See 42 Pa. Cons. Stat. Ann. §§ 5301, 5322; Provident Nat'l Bank, 819 F.2d at 437.

To sustain specific jurisdiction, the plaintiff's cause of action must arise from or relate to the defendant's contacts

with the forum. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n.8 (1984); Mellon Bank (East) PSFS v. Di Veronica Bros., Inc., 983 F.2d 551, 554 (3d Cir. 1993); Dollar Sav. Bank v. First Sec. Bank, 746 F.2d 208, 211 (3d Cir. 1984). It is uncontroverted that the correspondence and conduct on which plaintiff's claims are predicated occurred in New Jersey.

General jurisdiction may be exercised even when the claim arises from the defendant's non-forum related activities. See Helicopteros Nacionales, 466 U.S. at 414 n.9; Gehling v. St. George's School of Medicine, Ltd., 773 F.2d 539, 541 (3d Cir. 1985). To establish general jurisdiction, the defendant's contacts with the forum must be "continuous and systematic." See 42 Pa. Cons. Stat. Ann. §5301(a)(2)(iii); Fields v. Ramada Inn, Inc., 816 F. Supp. 1033, 1036 (E.D. Pa. 1993). CBIS has provided no affidavit or other evidence to refute plaintiff's averment that is regularly conducts business here or from which it otherwise appears that it is not subject to general jurisdiction here. CBIS also effectively conceded that it is subject to personal jurisdiction in this district by waiving any objection when filing the motion to dismiss for improper venue. See Fed. R. Civ P. 12(h)(1); Pilgrim Badge & Label Corp. v. Barrios, 857 F.2d 1, 3 (1st Cir. 1988) (defendant waived objection to personal jurisdiction by failing to assert it in Rule 12 motion to dismiss for improper venue). See also Albany Ins. Co. v. Almacenadora

Somex, S.A., 5 F.3d 907, 909 (5th Cir. 1998) (defendant waived particular objection to venue by failing to assert it in its motion to dismiss for improper venue on other grounds).

CBIS has failed to show that it does not reside here. As Experien and USA Funds reside in this district, CBIS has not met its burden of proving that venue is improper. See, e.g., D'Agostine v. United Hospital Supply Corp., 1996 WL 417266, \*4 (E.D. Pa. July 23, 1996) (corporate defendant which failed to show it did not regularly do business in district sufficient to sustain exercise of personal jurisdiction necessarily failed to prove improper venue).

As venue is not improper, this action cannot be transferred pursuant to 28 U.S.C. §1406(a).

**ACCORDINGLY**, this                    day of March, 2000, upon consideration of the Motion of defendant Credit Bureau Associates to Dismiss Plaintiff's Complaint (Doc. #12, part 1) and alternative Motion to Transfer (Doc. #12, part 2), and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motions are **DENIED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**